



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

IN REPLY REFER TO:

7202.4-OS-2018-01060;

7202.4-OS-2018-01155;

7202.4-OS-2018-01163;

7202.4-OS-2018-01296

June 28, 2019

Via email: [56045\\_87466291@requests.muckrock.com](mailto:56045_87466291@requests.muckrock.com)

Jimmy Tobias  
Reporter, Pacific Standard Magazine  
MuckRock News  
DEPT MR 54080  
411A Highland Ave  
Somerville, MA 02144-2516

Dear Mr. Tobias:

Re: Tobias v. U.S. Dep't of the Interior, No. 18-2342 (D.D.C.), concerning FOIA requests tracked as 18-00735, 18-01060, 18-01155, 18-01156, 18-01158, 18-01163, 18-01173, 18-01174, 18-01199, 18-01296, 18-01298, 18-01355

Dear Mr. Tobias:

On April 19, 2018, you filed a Freedom of Information Act (FOIA) request, which we entered as OS-18-01060, seeking the following:

[A]ny and all written or electronic communications, including attachments, sent or received by DOI Energy Counselor Vincent DeVito that contains one or more of the following words or phrases: "Texas hornshell," "TX hornshell," "hornshell listing," and/or "hornshell." The request seeks records produced between July 11, 2017 and August 18, 2017.

On May 10, 2018, you filed a Freedom of Information Act (FOIA) request, which we entered as OS-18-01155, seeking the following:

[A]ll documents and written and electronic communications, including attachments, that relate to the April 6, 2017 meeting between Assistant Secretary Douglas Domenech and Rob Henneke of the Texas Public Policy Foundation.

On May 11, 2018, you filed a Freedom of Information Act (FOIA) request, which we entered as OS-18-01163, seeking the following:

[A]ll written or electronic communications, including attachments, sent or received by Douglas Domenech and/or his executive assistant(s) that contain one or more of the

following words or phrases: "red river," "red river case," "property rights," "Henneke," "Texas Public Policy Foundation," and/or "TPPF." This request pertains to records produced between March 1, 2017 and November 30, 2017.

On June 14, 2018, you filed a Freedom of Information Act (FOIA) request, which we entered as OS-18-01296, seeking the following:

Any and all written or electronic communications, including attachments, between Jason Funes in the Office of External Affairs and any agent, representative or employee of the Property and Environment Research Center. This request includes any and all communications between Funes and any email address that ends in "@perc.org." This request seeks records produced between September 1, 2017 and the date this request is processed.

We are writing today to respond to your request on behalf of the Office of the Secretary. For three of the requests, we are releasing 1 files consisting of 131 pages. Pages 1 – 10 related to OS-2018-01155; Pages 11 – 24 relate to OS-2018-01060; and the remainder relate to OS-2018-01163. Of those 131 pages, 5 pages contain redactions as described below. The second set of documents contains 3 files consisting of 571 pages containing redactions in 20 documents. Redactions are described below. This completes our response to OS-18-01155 requests. If there are additional attachments that you seek in OS-18-01060, please let us know the document ID number (top right corner). Additional releases on other requests will be forthcoming as we process additional records.

**Portions of the documents may be redacted pursuant to Exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)) because they fit certain categories of information:**

#### **Personal Information, E-mail Addresses**

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The courts have held that the phrase "similar files" involves all information that applies to a particular person. Hertzberg v. Veneman, 273 F. Supp. 2d 67, 85 n.11 (D.D.C. 2003).

To determine whether releasing requested information would constitute a clearly unwarranted invasion of personal privacy, we are required to perform a "balancing test." This means that we must weigh the individual's right to privacy against the public's right to disclosure.

- (1) First, we must determine whether the individual has a discernable privacy interest in the information that has been requested.
- (2) Next, we must determine whether release of this information would serve "the public interest generally" (i.e., would "shed light on the performance of the agency's statutory duties").
- (3) Finally, we must determine whether the public interest in disclosure is greater than the privacy interest of the individual in withholding.

The information that we are withholding consists of personal information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in it.

Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties and that, on balance, the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in question, in withholding it. Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989).

In summation, we have determined that release of the information that we have withheld would constitute a clearly unwarranted invasion of the privacy of these individuals, and that it therefore may be withheld, pursuant to Exemption 6.

Leah Bernhardi, Attorney-Advisor, in the Office of the Solicitor, was consulted in reaching this decision. Clarice Julka, Office of the Secretary FOIA Officer, is responsible for making this decision.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding any of the issues discussed in this letter, you may contact Ryan McQuighan by phone at 202-513-0765, by fax at 202-219-2374, by e-mail at [os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov), or by mail at U.S. Department of the Interior, 1849 C St, NW, MS-7328 MIB, Washington, D.C. 20240. You also may seek dispute resolution services from our FOIA Public Liaison, Clarice Julka, at the phone and address above.

Sincerely,

Clarice Julka  
Office of the Secretary  
FOIA Officer